

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 1 May 2008**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Kimber, Heather, NWS-2008-434-NO**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: WA County/parish/borough: Whatcom City: Ferndale  
Center coordinates of site (lat/long in degree decimal format): Lat. 48° 50' 06.85" **N**, Long. 122° 40' 05.22" **W**.  
Universal Transverse Mercator: Zone 10 N E

Name of nearest waterbody: Jordan River

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lummi Bay

Name of watershed or Hydrologic Unit Code (HUC): Strait of Georgia, 17110002

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☒ Office (Desk) Determination. Date: 1 May 2008

☐ Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are no "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☒ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: Stream – 215 linear feet: 2 feet wide (avg.) – 0.01 acre

Wetlands: 7 acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: .

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

(perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: 955 **square miles**

Drainage area: 65 **acres**

Average annual rainfall: 34.8

Average annual snowfall: 8.6

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

☐ Tributary flows directly into TNW.

☒ Tributary flows through **4** tributaries before entering TNW.

Project waters are **2-5** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **2-5** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW<sup>5</sup>: Water from wetlands flows into unnamed on-site tributaries (ditches), then flows 1.10 miles before entering the Jordan River, which flows 2 miles before entering the Lummi River, which flows 1 mile before emptying into Lummi Bay

Tributary stream order, if known: 1.

**(b) General Tributary Characteristics (check all that apply):**

**Tributary is:** ☐ Natural

☐ Artificial (man-made). Explain:

☒ Manipulated (man-altered). Explain: Historic drainages have been channelized and re-routed

**Tributary properties with respect to top of bank (estimate):**

Average width: 3

Average depth: 3.5

Average side slopes: **2:1**.

**Primary tributary substrate composition (check all that apply):**

☒ Silts

☒ Sands

☐ Concrete

☐ Cobbles

☒ Gravel

☐ Muck

☐ Bedrock

☒ Vegetation. Grasses/ 20% cover:

☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable

Presence of run/riffle/pool complexes. Explain: None.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 3%

**(c) Flow:**

Tributary provides for:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Estimate average number of flow events in review area/year: 6  
Describe flow regime: Tributary has persistent flow from November to May and conveys flows during moderate to heavy rainfall events.

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

☒ Bed and banks

☐ OHWM<sup>6</sup> (check all indicators that apply):

☒ clear, natural line impressed on the bank

☐ changes in the character of soil

☒ shelving

☒ vegetation matted down, bent, or absent

☐ leaf litter disturbed or washed away

☐ sediment deposition

☐ water staining

☐ other (list):

☐ the presence of litter and debris

☒ destruction of terrestrial vegetation

☒ the presence of wrack line

☐ sediment sorting

☐ scour

☐ multiple observed or predicted flow events

☐ abrupt change in plant community

☐ Discontinuous OHWM.<sup>7</sup> Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☒ High Tide Line indicated by:

☐ oil or scum line along shore objects

☐ fine shell or debris deposits (foreshore)

☐ physical markings/characteristics

☐ tidal gauges

☐ other (list):

☐ Mean High Water Mark indicated by:

☐ survey to available datum;

☐ physical markings;

☐ vegetation lines/changes in vegetation types.

### (iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water is clear during normal to peak flows; stained brown by organics during low flows. Watershed has been moderately developed for agricultural and residential uses.

Identify specific pollutants, if known:

### (iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): Corridor from wetland to pond is dominated by field grasses;

Riparian cover is mixed grasses/shrubs.

☒ Wetland fringe. Characteristics: PFO wetlands abut upper portion of unnamed tributary .

☐ Habitat for:

☐ Federally Listed species. Explain findings: Puget Sound steelhead and Chinook identified as using Friday Creek for spawning and rearing.

☐ Fish/spawn areas. Explain findings: Subject reach and downstream areas have riffle/pool complexes used by spawning salmonids. Jordan River contains Essential Fisheries Habitat (Magnuson-Stevens Fishery Conservation and Management Act designation) for coho salmon

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Diversity of aquatic species in downstream waters rated moderate to high by WA Department of Fish & Wildlife.

## C. SIGNIFICANT NEXUS DETERMINATION

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

#### 1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs: linear feet width (ft), Or, acres.

☐ Wetlands adjacent to TNWs: acres.

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

2. **RPWs that flow directly or indirectly into TNWs.**

- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
- ☒ Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Based on information provided by the consultant, the unnamed tributary has persistent flow between November and May (7 months)

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☒ Tributary waters: 215 linear feet: 2 feet wide (avg.) – 0.01 acre
- ☐ Other non-wetland waters: .

Identify type(s) of waters:

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
- ☒ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: report titled, “*Critical Area Assessment report, Habitat management Plan, and Mitigation Plan for the Unick Road Property, Whatcom County, Washington,*” dated February 2008, identifies the boundary of the on-site wetland as abutting the unnamed tributary.

Provide acreage estimates for jurisdictional wetlands in the review area: **7.00 acre.**

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
- ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

F. **NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

<sup>8</sup>See Footnote # 3.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: project drawings, wetland delineation, and mitigation plan.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5min, Lummi Bay Quad.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☐ National wetlands inventory map(s). Cite name: .
- ☒ State/Local wetland inventory map(s):WA Dept. of Ecology, 2001.
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):WA Dept of Ecology, 2005.  
or ☐ Other (Name & Date): .
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☐ Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**